



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FAX AND CERTIFIED MAIL

JAN 14 2008

Brian G. Svoboda, Esq.
Ezra W. Reese, Esq.
Perkins Cole
607 Fourteenth Street, N.W.
Washington, DC 20005-2011

RE: MUR 5840
Ellen Simon

Dear Messrs. Svoboda and Reese:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") found reason to believe that your client, Ellen Simon, violated 2 U.S.C. § 441a-1(b).

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

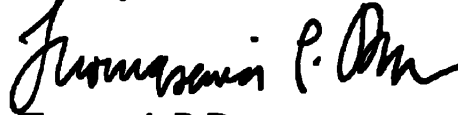
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You may also request an oral hearing before the Commission. See Commission's "Policy Statement Establishing a Pilot Program for Probable Cause Hearings," 72 Fed. Reg. 7551 (Feb. 16, 2007). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Thomasenia P. Duncan
General Counsel

Enclosure
Brief

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4) MUR 5840
5 Ellen Simon)
6

7 **GENERAL COUNSEL'S BRIEF**

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9 **I. STATEMENT OF THE CASE**

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11 On August 1, 2007, the Federal Election Commission found reason to believe that Ellen
12 Simon violated 2 U.S.C. § 441a-1(b) by failing to timely file a 24-Hour Notice of Expenditure
13 from Candidate's Personal Funds (FEC Form 10). Based on the following analysis, this Office is
14 prepared to recommend that the Commission find probable cause to believe that Ellen Simon
15 violated 2 U.S.C. § 441a-1(b).

16 **II. ANALYSIS**

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18 Ellen Simon was a 2006 Congressional candidate in Arizona's 1st congressional district.
19 Ellen Simon for Congress (the "Committee") is a political committee within the meaning of
20 2 U.S.C. § 431(4), and the authorized committee for Ellen Simon.

21 On July 14, 2006, the Committee filed its first report, the 2006 July Quarterly Report. In
22 that report, the Committee disclosed that Ms. Simon made two contributions to her campaign: a
23 \$50,000 contribution on May 5, 2006 and a \$225,000 contribution on June 29, 2006. The
24 Committee reported both transactions as contributions made by the candidate from her own
25 personal funds.¹ However, the \$50,000 contribution was actually a loan from the candidate and
26 the \$225,000 contribution was actually funded by a draw on a revolving line of credit from Wells
27 Fargo Bank, which was secured by Ms. Simon's residence. On August 31, 2006, the Committee
28 filed an amendment to the 2006 July Quarterly Report, in which it re-characterized the \$50,000

¹ The term "personal funds" includes amounts derived from any asset that, under applicable State law, at the time the individual became a candidate, the candidate had right of access to or control over, and with respect to which the candidate had legal and rightful title or an equitable interest. 11 C.F.R. § 100.33.

1 contribution made on May 5th as a loan from the Candidate and the \$225,000 contribution made
2 on June 29th as a loan from Wells Fargo Bank, guaranteed by the Candidate.

3 On August 21, 2006, Ms. Simon made a second draw on the line of credit, in the amount
4 of \$250,000, and again contributed the money to her Committee. The \$250,000 expenditure
5 brought the total amount of personal funds expended by the Candidate to \$525,000. Six days
6 later, on August 27, 2006, the Committee disclosed the \$250,000 expenditure in a 24-Hour
7 Notice of Expenditure from Candidate's Personal Funds (FEC Form 10).

8 In a Request for Additional Information ("RFAI"), dated September 19, 2006, the
9 Reports Analysis Division ("RAD") explained that 24-Hour Notices must be filed when a
10 candidate for the House of Representatives makes more than \$350,000 in expenditures from
11 personal funds and noted that the FEC Form 10 the Committee filed on August 27, 2006
12 appeared to have been filed outside of the 24-hour period. In response to the RFAI, a consultant
13 to the Committee confirmed that the Committee had exceeded the \$350,000 reporting threshold
14 on August 21, 2006 and stated that Committee staff had not notified him of the expenditure that
15 triggered the 24-hour reporting requirement until August 27, 2006.

16 When a candidate for the United States House of Representatives "makes or obligates to
17 make an aggregate amount of expenditures from personal funds in excess of \$350,000 in
18 connection with any election" the candidate or his authorized committee must notify the
19 Commission by filing a notification of expenditure (FEC Form 10) with the Commission within
20 twenty-four hours after exceeding the threshold. 2 U.S.C. § 441a-1(b)(1)(C); 11 C.F.R.
21 § 400.21(b). An expenditure from personal funds includes direct contributions as well as loans
22 made by a candidate using personal funds or a loan secured using such funds to the candidate's
23 authorized committee. 2 U.S.C. § 441a-1(b)(1)(A); 11 C.F.R. § 400.4; *see also* MUR 5730

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(Charles Taylor for Congress); MUR 5623 (Mike Crotts for Congress). The committee must also send copies of the FEC Form 10 to each opposing candidate and the national party of each such candidate within 24 hours of the expenditure. 2 U.S.C. § 441a-1(b)(1)(F); 11 C.F.R. § 400.21(b). Although the notification is signed by the committee treasurer, the candidate is responsible for ensuring that it is timely filed by his or her principal campaign committee. 11 C.F.R. § 400.25.

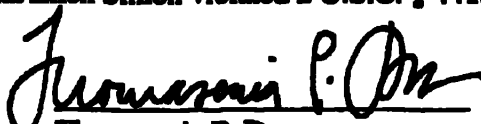
In this matter, the FEC Form 10 was filed five days late. Ms. Simon made the second draw on the Wells Fargo home equity line of credit and forwarded the resulting \$250,000 to her committee on August 21, 2006. The \$250,000 caused Ms. Simon to exceed the \$350,000 reporting threshold and triggered the requirement that her Committee file notice of the transaction with the Commission and opposing candidates and their parties within 24 hours, i.e., by August 22, 2006. The Committee did not file its FEC Form 10 until August 27, 2006.

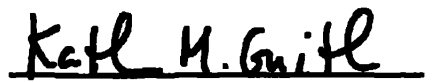
The Committee did not file a 24-Hour Notice of Expenditure from Candidate's Personal Funds (FEC Form 10) in a timely fashion and candidates are responsible for ensuring that 24-Hour Notices are timely filed. Therefore, this Office is prepared to recommend that the Commission find probable cause to believe that Ellen Simon violated 2 U.S.C. § 441a-1(b).

III. GENERAL COUNSEL'S RECOMMENDATION


Find probable cause to believe that Ellen Simon violated 2 U.S.C. § 441a-1(b).

1/11/2008
Date


Thomasenia P. Duncan
General Counsel


Kathleen M. Guith
Acting Associate General Counsel
for Enforcement

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Thomas J. Andersen
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